IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

T.R.C.No.93 of 2003

T.A.NO.813/2001 OF THE KERALA SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, ERNAKULAM (ORDER DATED 10.7.2002)

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PETITIONER: (ASSESSEE/APPELLANT):-

P.R. BALAKRISHNAN, PROPRIETOR,
M/S. WOODLANDS JEWELLERY, ERNAKULAM.

BY ADV. DR.K.B.MUHAMED KUTTY (SR.)
SRI.K.M.FIROZ

RESPONDENT: (REVENUE/RESPONDENT):-

STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERMENT,
TAXES DEPARTMENT,
GOVT. SECRETARIAT, TRIVANDRUM.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ.

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 10/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:-

H.L.DATTU, C.J. & K.T.SANKARAN, J.

T.R.C.No.93 of 2003

Dated, this the 10th day of August, 2007

JUDGMENT

H.L.Dattu, C.J.

This matter arises under the provisions of the Kerala General Sales Tax Act ('KGST Act' for short).

(2) Petitioner is a dealer registered under the provisions of the Kerala General Sales Tax Act, 1963 and the Central Sales Tax Act, 1956. He was running a jewellery shop at M.G.Road, Ernakulam. It appears, he had stopped his business with effect from 6.11.1994.

(3) Some time in the month of September, 1994, the business premises as well as the residential premises of the assessee was searched by the Income Tax Department in exercise of their powers under Section 132 of the Income Tax Act. There was huge seizure of gold, both from the business premises as well as from the residential premises of the assesse. In order to buy peace with the Department, the assessee had approached the Settlement Commission and had obtained an order under Section 245(d)(i) of the Income Tax Act .

(4) For the assessment year 1994-95, the assessee had filed his annual returns, both under the KGST Act and CST Act.

(5) The assessing authority having come to know about the raids conducted by the Income Tax Department and also the orders passed by the Settlement Commission, has rejected the books of accounts and also the returns filed by the assessee and thereafter had issued a pre-assessment notice proposing to estimate the turnover by adopting running stock method for determining the tax liability under the Act. The proposal so made was objected

to by the assessee by filing his detailed statement of objections. The assessing authority after considering the objections so filed, has passed the best judgment assessment order. The conclusion reached by the assessing authority is as under:-

> "Finally, the request is to drop the running stock method. The large scale suppression detected on raid of the place of business & residence obviously prove the total incorrect nature of the accounts. Hence the books of accounts are unworthy of acceptance. The method of estimation of turnover based on running stock has been held to be a very valid one thro' various dictums of the courts. This is a specific case, warranting estimation of the turnover at 6 times the average running stock."

(6) Aggrieved by the orders passed by the assessing authority, the assessee had carried the matter by way of appeal before the first appellate authority. The first appellate authority has modified the orders of assessment passed by the assessing authority and in his opinion, the multiplier adopted by the assessing authority is excessive and, therefore, has adopted the multiplier of four, for the purpose of computation of the tax liability by sustaining the the running stock method adopted by the assessing authority.

(7) Not being satisfied by the orders passed by the first appellate authority, the petitioner has ventured to file second appeal before the Tribunal in T.A.Nos.813 of 2001 and 182 of 2002. The Tribunal by its order dated 10th July, 2002, once again has modified the orders passed by the first appellate authority and has adopted three times as the multiplier for the purpose of quantification of the tax liability.

(8) Aggrieved by all these orders, the assessee is before us in this revision petition filed under Section 41 of the Act. The questions of law framed by the assessee for consideration and decision of this Court are as under:

> "(i) Whether on the facts and in the circumstances of the case the appellate Tribunal was justified in holding that the revision petitioner did not dispute the seizure of unaccounted gold ornaments. Has not the Tribunal committed an error in analysing the facts of the case.
>
> (ii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in law in sustaining the method of running stock assessment against the petitioner especially when the business was stopped from 6.11.1994.
>
> (iii) Whether on the facts and in the circumstances of the case the appellate tribunal is justified in fixing the taxable turnover at three times of the running stock. Has not the turnover fixed by the Tribunal excessive and arbitrary?"

(9) Sri.K.B.Mohammed Kutty, learned senior counsel appearing for the assessee, would contend, that even while concluding the best judgment assessment, the assessing authority has to adopt a reasonable and normal method and he cannot adopt a method wherein the liability of the tax payer is increased to an extent, that the tax payer would not be in a position to pay off the tax due under the Act. In support of that contention the learned counsel has relied upon few decisions of this Court.

(10) Per contra, Sri.Mohammed Rafiq, learned Senior Government Pleader appearing for the Revenue, would contend, that one of the method that can be adopted by the assessing authority while quantifying the tax liability by best judgment assessment, is by taking the average running stock and multiplying the same by six times to arrive at the estimated turnover of the dealer. In support of that submission learned Government Pleader has relied upon a recent decision of a Division Bench of this Court in the case of *Jyothi Jewwellery* v. *State of Kerala* [(1998) 110 STC 556]. In the said decision this Court has observed as under:

> "This amount of Rs.69,47,290/-, it is found, was arrived at by adding up the value of the opening stock as on April 1, 1987

> and closing stock as on March 31, 1988 and thereafter dividing it by two. This is the normal method accepted throughout to arrive at estimated turnover and there cannot be any quarrel in regard thereto. Both through the department as well as through the decisions in regard thereto the result is known as the running stock and this was multiplied by 6 to arrive at the figure of estimated turnover. There are decisions with regard to the proper figure of multiplication in the matter of assessees dealing in gold and silver, either primary or melting or preparation of ornaments therefrom."

(11) In the instant case, the assessee is a dealer in gold. He had filed his annual returns for the assessment year 1994-95. In the month of September, 1994 there was search in the business as well as residential premises of the assessee by the Income Tax Department and they had unearthed huge quantity of gold which was not declared in the returns filed under the provisions of the Income Tax Act. The assessee had approached the Settlement Commission to get out of the rigour of the provisions for payment of interest, penalty, etc., under the provisions of the Income Tax Act. The request made by the assessee was accepted by the Settlement Commission.

(12) The proceedings before the Income Tax Department were made known to the assessing authority. Keeping in view the voluntary statement made by the assessee before the Settlement Commission, the assessing authority after rejecting the books of accounts, has adopted running stock method, which method is one of the acceptable methods for the purpose of computation of tax liability under the Act of an assessee dealing in gold and silver, if for any reason, the books of accounts of such a dealer is rejected by the assessing authority. To arrive at that conclusion we are supported by the Division Bench decision of this Court. In our opinion, the law declared by this Court in the aforesaid decision is the correct legal position in law and therefore the same can be followed. In that view of the matter, the assessing authority

was justified in adopting the running stock method for the purpose of computation of tax liability while passing the best judgment assessment. However, the first appellate authority as well as the Tribunal are of the opinion that since the assessee had stopped his business some time in the month of November, 1994, while estimating the turnover of the assessee, the multiplier has to be reduced by three times.

(14) The quantification of tax liability is made on the estimation basis. Such estimation basis normally will not be interfered with by this Court in a petition filed under Section 41 of the KGST Act, unless it is demonstrated before us that the findings of fact arrived at by the Tribunal is wholly perverse. In the instant case, though an attempt was made by the learned counsel for the assessee that the findings of the Tribunal are perverse, in our opinion, he has failed in his attempt. In that view of the matter, accepting the findings and conclusions reached by the Tribunal, the revision petition filed by the assessee requires to be rejected and it is accordingly rejected. The questions of law framed by the assessee are answered against the assessee and in favour of the Revenue.

Consequently, C.M.P.No.1128 of 2003 is also dismissed.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns/DK.